such other rules and orders as appear just according to the circumstances of the case."

3.—The repeal of the said eighth section of the said Act shall not affect any cause, matter or proceeding now pending in any Court of Law or Equity in Upper Canada, but the same may be continued under the said "Act respecting Interpleading" as amended by this Act.

4.—This Act shall apply to Upper Canada only.

SELECTIONS.

LAW REPORTING—No. 2.

(*Continued from* 10 U. C. L. J., p. 317.)

In a former number we stated that the reports of those reporters whom we cited as examples of good reporting usually had three divisions. 1st. The case or statement of facts. 2nd. Argument of counsel on these facts. 3d. The *opinion* of the Court on what preceded; each of the parts being separate and *pure;* the statement or "case," pure fact; the argument of counsel, argument merely; the opinion, opinion simply, with the grounds assigned therefor.

Now wherein do the American reports, especially the reports of later times continually differ from these models? They differ from them in this respect chiefly, to wit: that the "statement" does not present facts at all, and that the opinions do present them largely. And the order of results has been, I think, this:

1st. That the arguments of counsel were unintelligible.

2d. That they have been suppressed.

3d. That "opinion" has become the whole "report;" a report generally not a good one and often positively bad: its value as "report" diminishing in exact ratio of its perfection as "opinion."

4th. That the law, so far as it is *a science of precedents* is becoming radically disturbed, and that instead of resting,—like that system of our English ancestors adopted by our American fathers of 1776 as their own—on known adjudications—adjudications which were respected ostensibly because they were solemn judgments—we are in danger of drifting into another system—a system more like that of Continental Europe—where jurisprudence shall be without soundings or chart, and without even a compass other than what this body of men or that may think good on principles of general equity; a system bad enough even when integrity characterizes its administrators; but woful if integrity should cease ever to be their portion.

This last proposition is a long one, and perhaps alarming. I think I shall show it to be true, if my reader will follow me through.

[I do not here think it worth while to refer at large to another class of reports—characterized by exactly opposite qualities, so far as respects the reporter's work—a class represented in perfection by those of Pennsylvania some years ago. These have a statement with a witness: for the reporters used to cast in as their "case," the paper book complete: testimony as taken at large upon the judge's notes; deeds, wills, &c., *in extenso*, with seals, signatures, acknowledgments, and all; the whole record in short as it came up. This disorderly congeries being nearly as unintelligible as no statement at all, the result was much as though none had been made in fact; as we may still include such reports within the class I treat of; that is to say the class where the reporter does *not* state the case and leaves the facts to be gathered from the opinion only.]

The following presents the form of report which I speak of as now common in several States of the Union, and is one of the better illustrations of what I deem a bad form: I do not mean to speak of the form as *universally* prevalent in America. It does not prevail in Massachusetts, nor in Rhode Island, nor in Connecticut, nor in Vermont, nor in New Hampshire, nor much, I think in New York:—I mean does not prevail in their Supreme Court Reports. Nor did it prevail in Virginia so long as she gave us reports at all. There are probably other States where it may not have place. At the same time it is a common form in our country, especially in the West, though it is not confined at all to the courts of that great and increasing part of our nation.(a) To revert however to our report. Here it is:

Smith v. Jones.

Executors to whom a power is given by will to sell land but who have all renounced the executorship, yet have power to execute a valid deed of the land; and this although they have not only renounced, but have agreed and assisted in the appointment of other persons as administrators *cum testamento annexo*, who are still alive.

This was a writ of error to Jackson county, the suit below having been ejectment to recover

(a) The reader seeking illustrations of the style, will find them in such cases as these. *Thomas* v. *Bowman*, 30 Illinois, 83; *Thompson* v. *Board of Trustees*, id. 99; *Huereth* v. *Franklin Mill Co.* id. 151; *People* v. *Auditor*, id. 434, or in *Spining* v *Blackburne*, 13, Ohio State, 131; *Dudley* v. *Geauga Iron Works*, id 169; *Plun. b* v *Robinson*, id. 299; *Port Clinton Co.* v. *Cleveland Co.* id. 545; *Ish* v. *Crane*, id. 575, or in *Therrard* v. *Carlisle*, 1 Patton & Heath, 13; or in *Stewart* v. *Rogers*, 1 Maryland, 99; *Haight* v. *Burr*, id. 131; *Weems* v. *Weems*, id. 345; *Stickney* v. *Gyaff*, id. 491; or in *Way* v. *Lamb*, 15 Iowa, 81; *Stuck* v. *Reese*, ip. 122; *Hunt* v. *Daniels*, id. 146; *Harper* v. *Drake*, id. 157; *Hershee & Huber* v. *Hershee*, id 185; *Humphrey* v. *Darlington*, id. 207; or in *Spear* v. *Whitfield*, 2 Stockton's Chancery, 108; *Clapp* v. *Ely*, id 179, *Holmes* v *Stout*, 419, &c.

Some of the reports begin without the *least statement* whatever of the case, thus:

"*Points and authorities of appellant.*

See in illustration of this style, *Sowers* v. *Duke*, 8 Minnesota, 23, *Rael* v. *Baasen*, 26, *Finney* v. *Gallendar*, 41; *Rutherford* v. *Newman*, 47; and in fact *per totum librum* In Stockton's Chancery Reports and in those of Beasely (both of New Jersey) there is frequently no statement at all; the reporters acting as mere *editors* of the opinions. This is particularly true of Mr. Beasely's.

I particularize the different volumes above mentioned, because they come first to my hand. But they represent a large class of reports throughout the country.